

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LINDA CHAU,) CASE NO. C09-1130Z
)
Plaintiff,)
)
v.) MINUTE ORDER
)
CITY OF SEATTLE, et al.,)
)
Defendants.)
_____)

The following Minute Order is made by direction of the Court, the Honorable Thomas S. Zilly, United States District Judge:

(1) This matter came before the Court on defendants' motion for summary judgment, docket no. 20, seeking dismissal of plaintiff's claims. Plaintiff failed to file any argument or evidence in opposition to summary judgment. The Court considers this as an admission that the motion has merit. See Local Rule CR 7(b)(2). The Court has also considered the pleadings of record and the evidence submitted by the defendants in support of their motion for summary judgment, and has concluded that defendant is entitled to judgment as a matter of law and dismissal is appropriate for the following reasons:

(a) A police officer is immune from suit under the doctrine of qualified

01 immunity for violations of section 1983 where (1) the actions of the
02 officer did not amount to a constitutional violation; (2) the violation was
03 not clearly established; or (3) the officer's actions reflect a reasonable
04 mistake about what the law requires. Brooks v. City of Seattle, 599 F.3d
05 1018, 1022 (9th Cir. 2010). Officer Campbell's actions do not amount to
06 a constitutional violation, where the only evidence in the record
demonstrates that he believed that Chau posed a danger to his safety, and
where Chau concedes that from his perspective, it could have appeared
that way. See Graham v. Connor, 490 U.S. 386, 388 (1989); see also
Miller v. Clark County, 340 F.3d 959 (9th Cir. 2003).

07 (b) As federal qualified immunity is appropriate, Officer Campbell is also
08 entitled to immunity from plaintiff's common law claims for battery and
09 assault under Washington state law. McKinney v. City of Tukwila, 103
Wn. App. 391 (2000).

10 (c) To establish a claim for intentional infliction of emotional distress, a
11 plaintiff must show 1) extreme and outrageous conduct; 2) intentional or
12 reckless infliction of emotional distress; and 3) actual severe emotional
13 distress. Robel v. Roundup Corp., 148 Wn.2d 35 (2002). As Plaintiff
14 has filed no response to defendants' motion for summary judgment, the
15 only evidence in the record relating to the emotional distress claims is
16 Officer Campbell's testimony that he believed that Chau intended to strike
17 him or flee the scene. Plaintiff cannot establish the element of extreme or
outrageous conduct under these circumstances. Similarly, plaintiff must
present evidence of objective symptomatology to overcome a motion for
summary judgment on a claim of negligent infliction of emotional
distress. Kloepfel v. Bokor, 149 Wn.2d 192 (2003). Plaintiff has failed
to submit any evidence of objective symptomatology in support of her
claims, and cannot rely solely on her pleadings.

18 (d) Plaintiff has admitted that she has no evidence to support her claim for
19 negligent supervision against the City of Seattle. Altman Decl., docket
no. 21, Ex. A (Chau Dep.) at 44.

20 (2) Defendants' motion for summary judgment, docket no. 20, is
21 GRANTED. Plaintiff's claims against defendants are DISMISSED
22 with prejudice.

01 (3) The Clerk is directed to send a copy of this Minute Order to all counsel
02 of record.

03 Filed and entered this 29th day of July, 2010.

04 BRUCE RIFKIN, Clerk

05 s/ Claudia Hawney

06 By:

07 Claudia Hawney
08 Deputy Clerk
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